
ORAL ARGUMENT NOT SCHEDULED

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 18-1114, 18-1118,
18-1139, and 18-1162

STATE OF CALIFORNIA, *ET AL.*,

PETITIONERS

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, *ET AL.*,

RESPONDENTS

PROOF AMICUS BRIEF OF LYFT, INC.

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, Lyft, Inc. (“Lyft”) certifies that Lyft is a privately held corporation with no parent corporation. Rakuten, Inc., a publicly held corporation traded on the Tokyo Stock Exchange, owns more than ten percent of Lyft’s outstanding stock through a subsidiary.

February 14, 2019

/s/ Jared P. Marx

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**STATEMENT OF INTEREST, IDENTITY,
AND AUTHORITY TO FILE**

Lyft provides a smartphone platform that lets drivers and riders coordinate to offer and take car rides. The service is available to 95% of the people in the United States, and also provides access to bicycles, electric scooters, and mass transit coordination. Lyft has also made a unique commitment to environmental stewardship, and since 2018 has purchased carbon offsets to make its operations 100% carbon-neutral, including all of its rides.

Lyft relies on EPA's greenhouse gas standards both to reduce fuel costs for drivers and to help make its rides carbon-neutral. Drivers that use Lyft need fuel-efficient cars to make the service more economic, and both Lyft and its riders count on that fuel efficiency to reduce costs and protect the environment. EPA was wrong to rule that its greenhouse gas standards for the first part of the next decade are "inappropriate" and should be weakened. Lyft therefore provides its views here as amicus to highlight the negative policy consequences of that decision, to reinforce the Court's authority to review the decision now, and to note the lack of reasoned decision-making that supports EPA's conclusion.

STATEMENT OF AUTHORSHIP AND FINANCIAL CONTRIBUTIONS

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), Lyft, Inc. states that its counsel at Harris, Wiltshire & Grannis LLP authored the following amicus brief. No party or their counsel contributed money with the intention of funding the preparation or submission of this brief. No person or entity other than Lyft, Inc. contributed money that was intended to fund the brief's preparation or submission.

SUMMARY OF ARGUMENT

Lyft depends on automakers to make fuel-efficient vehicles available and affordable. EPA's determination that the existing 2022–2025 greenhouse gas standards are “inappropriate” harms Lyft, its drivers, and its riders because it will make efficient vehicles less readily available and more expensive than they otherwise would have been. The Court should review and reverse EPA's determination.

First, Lyft counts on the automotive industry's innovations in fuel efficiency and electrification to support Lyft's economic and environmental goals. Efficient vehicles mean more earnings for drivers, cheaper rides for passengers, and a better business for Lyft. But efficient vehicles are only available if their upfront costs are not too high for drivers. These upfront costs come down when automakers have an incentive to invest in new technologies at scale and over an extended period of time. Efficient vehicles also serve the commitment that Lyft and its drivers and riders have made to the environment. Lyft has pledged to make all of its rides carbon-neutral, and has begun offering riders in one pilot market the ability to choose to ride in only electric

and hybrid vehicles. More efficient vehicles make all of that easier and less expensive.

Second, Lyft and companies like it have been genuinely harmed by EPA's rejection of the prior mid-term evaluation, so the Court should review that determination now. EPA's determination was a final one, with real legal effects on parties' rights to compel EPA through mandamus to revise its 2022–2025 greenhouse gas standards. It also had a practical negative effect on companies like Lyft, which rely on automakers to invest in bringing more efficient vehicles to market. EPA's finding that the existing standards *will be revised down* harms that reliance interest in a practical, business-affecting way.

Third, EPA's determination makes no sense and cannot satisfy the Administrative Procedures Act. EPA barely suggests that it conducted a sufficient re-review of the 1,217-page Technical Assessment Report to support rejecting that study's conclusion that the technology supports the standards. Instead, EPA essentially argues (with cherry-picked facts) that depressed consumer adoption requires a slackening of the standards. But that argument amounts to saying that EPA's 2022–2025 standards should be eased because, in 2018, they had not yet

achieved their intended effect on industry and consumers. That makes no sense. Lyft and its drivers *want more efficient* vehicles, and are relying on manufacturers to make those vehicles increasingly affordable and available.

ARGUMENT

I. Lyft and its Users Rely on Fuel-Efficient Vehicles.

John Zimmer and Logan Green founded Lyft seven years ago, and in a short period the company and the industry have dramatically changed the way people use transportation. Lyft has grown exponentially; during its existence, Lyft has provided over a billion rides, and more than half of those rides came within *only the past year*. See Lyft Blog, “2018 in Review: Putting Our Vision Into Action” (Jan. 3, 2019), available at <https://blog.lyft.com/posts/2018/12/19/2018-year-in-review>.

Change in Lyft’s industry comes fast, and one of the most obvious changes is that drivers and riders increasingly want cheaper, cleaner, and more efficient options. One reason for that is economic: more fuel efficiency means lower costs for drivers, which means more money for the families that many drivers support. In its 2017 Determination,

EPA estimated that drivers with vehicles that met the 2025 standards would, net of higher upfront costs, save \$1,650 in lifetime fuel costs when compared to vehicles that met only the 2021 standards. 2017 Determination at 24 (JA ____). Because Lyft's drivers track so many more miles than an average car owner, they would likely realize even greater savings than this. Lyft's riders share those economic interests, because they also want less expensive rides.

Beyond economics, Lyft and its constituents also want efficient options for environmental reasons. Lyft spends millions of dollars a year purchasing carbon offsets to ensure its rides are 100% carbon-neutral, making Lyft one of the top-ten global voluntary purchasers of carbon offsets. *See* Lyft Blog, "Lyft Commits to Full Carbon Neutrality and 100% Renewable Energy" (Sept. 11, 2018), available at <https://blog.lyft.com/posts/lyft-commits-to-full-carbon-neutrality-and-100-renewable-energy>. Likewise, because Lyft's riders and drivers have asked for more eco-friendly options, Lyft has now launched a service that allows riders to select to ride only in an electric or hybrid vehicle—"Green Mode". *See* Lyft Blog, "Making Cities More Livable with Electric Vehicles" (Feb. 6, 2019), available at

<https://blog.lyft.com/posts/2019/2/6/making-cities-more-liveable-with-electric-vehicles>. And the cities in which Lyft operates, too, want cleaner air, and thus expect Lyft to encourage fuel economy.

But fuel-efficient and electric vehicles are not an option for Lyft's drivers unless they are affordable and widely available. Lyft drivers generally buy or lease late-model cars, and if the upfront costs of fuel-efficient cars are too high, they may simply have to buy less-efficient ones.

Lyft must rely on the automotive industry to make fuel-efficient vehicles prevalent and affordable. That will only happen if automakers invest in efficiency-increasing technologies, and that investment is most likely if EPA has future standards on its books *today* that drive that change. Auto manufacturers are often slow to develop efficient vehicles *even when* there is growing demand for them. EPA's standards correct for this, helping support the innovation that moves the economy forward.

II. EPA's Determination that the Greenhouse Gas Standards Are "Inappropriate" Harms Lyft, and Is Reviewable.

EPA's original greenhouse gas standards for 2022–2025 benefitted Lyft by ensuring that vehicles with high fuel efficiency and low carbon emissions would be available and affordable through the first half of the next decade. They also made it much more likely that automotive manufacturers would invest in hybrid and electric automotive technology, likewise benefitting Lyft's business and environmental goals.

But EPA has now ruled that those standards are “not appropriate,” because they “present[] difficult challenges for auto manufacturers” and will have “adverse impacts on consumers.” Revised Determination at 16087 (JA__). That ruling is not, as EPA has attempted to intimate, akin to a garden-variety rulemaking notice, reviewable only when a later decision follows. It constitutes a final action of the Administrator, and has harmed many parties, including Lyft.

EPA made an express and final finding that the existing standards are inappropriate, and is therefore wrong to assert that its

decision effected “no change in the legal rights and obligations of any stakeholders.” *Id.* (JA__). Those findings changed (1) parties’ mandamus rights, and (2) the standard that will apply if the Administrator should revert to the original greenhouse gas standards.

As a general matter, parties affected by an agency’s failure to follow its own regulations may seek mandamus relief. *See, e.g., Monmouth Med. Ctr. v. Thompson*, 257 F.3d 807, 813 (D.C. Cir. 2001) (holding that mandamus can be used to enforce a regulatory requirement). EPA’s ruling that the standards are “inappropriate” implicates EPA’s regulation *requiring* a new rulemaking for those standards. 40 C.F.R. § 86.1818-12(h) (“[i]f the Administrator determines [the standards] are not appropriate, the Administrator shall initiate a rulemaking to revise the standards”). So if the Administrator fails to complete its new greenhouse gas rulemaking, a party unhappy with the 2012 version of the 2022–2025 greenhouse gas standards *may now sue* to compel EPA to complete that review. That is a meaningful legal effect of the Administrator’s action, and one that supports the Court’s review here.

More importantly, the Revised Determination did not merely undo the mid-term evaluation, but instead further *bound EPA* to the conclusion that the present standards are inappropriate. That conclusion has meaningful legal effects for EPA, because EPA can now reverse it *only* by carrying the burden of an additional showing that there is a “reasoned explanation” for doing so. *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2125 (2016); *Ramapraakash v. F.A.A.*, 346 F.3d 1121, 1125 (D.C. Cir. 2003) (“An agency’s failure to come to grips with conflicting precedent constitutes ‘an inexcusable departure from the essential requirement of reasoned decision making,’” quoting *Columbia Broad. Sys. v. FCC*, 454 F.2d 1018, 1027 (D.C. Cir. 1971)). That determination, too, is meaningful and final.

EPA’s determination has also had practical negative effects on Lyft. Unlike statements in requests for comment or in public notices, the Revised Determination here made clear that the 2022–2025 standards would necessarily be eased. This determination will undercut the business case for automakers to invest in more efficient vehicles and for other businesses to invest in charging infrastructure for electric vehicles. For Lyft, that means that it and its drivers must plan

for less efficient vehicles for the first half of the next decade. As a business that relies on the availability of efficient and innovative vehicles, that is a very real, unfortunate, and economically harmful outcome.

III. EPA's Revised Determination Is Not Reasoned.

On the merits, EPA provides no reasonable basis for finding the 2022–2025 greenhouse gas standards “inappropriate.” The regulation-mandated Technical Assessment Report showed that there *was* sufficient technology to support the existing standards, and EPA neither prepared a new Technical Assessment Report nor addressed in any detail the existing report’s analysis regarding technology that would be available to meet the greenhouse gas standards in 2022–2025. EPA instead relied primarily on *retrospective* views about consumer adoption to suggest that the standards were nevertheless inappropriate. That does not constitute reasoned decision-making, and the Revised Determination should not be upheld.

When EPA mandated the mid-term evaluation of the 2022–2025 fuel efficiency standards, it also required that, as part of that mid-term review, EPA compile a Technical Assessment Report on the feasibility of

the standards. *See* 40 C.F.R. § 86.1818-12(h). EPA conducted that examination, and in 2016 issued a 1,217-page report that makes clear that technology *does* and *will* exist to make the standards feasible. The Administrator took comment on that draft and relied on it in making its original determination that the 2022–2025 greenhouse gas standards were appropriate.

In now reversing that prior determination, EPA did not prepare a revised Technical Assessment Report. Nor did the Administrator make any serious effort to address the detailed findings in the existing report. EPA instead admits that “technologies continue to develop,” and that “commenters have identified both current and promising technologies that may be able to deliver significant improvements in reducing GHG emissions once fully deployed.” Revised Determination at 16082 (JA__). But it then concludes, with virtually no comment on the 1,217 pages of information it compiled in the Technical Assessment Report, that “there is significant uncertainty both in the pace of development of these technologies and in the degree of efficiency improvements they will ultimately be able to deliver.” *Id.* That conclusion plainly has insufficient support to provide a basis for the agency’s departure from

precedent. *See, e.g., Ramaprabash v. F.A.A.*, 346 F.3d at 1125 (requiring rational explanation for agency departure from precedent).

In light of this, the Administrator relies instead primarily on claims about consumer adoption to support its reversal. Some of those claims are facially meritless: for example, the Administrator claims that lower fuel costs make the existing standards too stringent, *but acknowledges* that EPA relied on *nearly identical* fuel price assumptions when it concluded in 2017 that the standards *were* appropriate. *See* Revised Determination at 16084 (JA__).

More significant is EPA's pervasive and misleading claim that consumer adoption of fuel-efficient technologies has been slow, and therefore more stringent greenhouse gas standards are unwarranted. *See, e.g.,* Revised Determination at 16081 (JA__) (asserting that new technologies "lack a requisite level of consumer acceptance"); *see generally* Revised Determination at 16079–86 (JA__). EPA places great weight on a single piece of data, submitted by Global Automakers, purporting to show that electrified light vehicle sales are in decline. EPA's reliance on this data fails to support the conclusion of its Revised Determination for two reasons. First, the vehicle sales data submitted

by the Global Automakers ends in early 2016. This data was largely if not entirely available to EPA when it prepared the 2016 Technical Assessment Report and therefore cannot provide a basis for rejecting the analysis in the Technical Assessment Report or the conclusions of the 2017 Determination.

Second, and more strikingly, the sales data presented by EPA appears cherry-picked to highlight a short-lived dip in electric vehicle sales that took place in 2015. It is true that electric vehicle sales declined slightly in 2015. Analysts pointed to a number of factors for the dip, including the anticipated roll-out of certain 2016 models that led some buyers to hold off. *See* John Voelcker, “Plug-In Electric Car Sales For 2015 Fall Slightly From 2014,” Green Car Reports (Jan. 19, 2016), available at https://www.greencarreports.com/news/1101751_plug-in-electric-car-sales-for-2015-fall-slightly-from-2014. But whatever its cause, the dip did not last. As EPA surely knew by the time it released the Revised Determination, Electric Vehicle sales soared by 37% in 2016, by 26% 2017, and by 81% in 2018. Ultimately, U.S. electric vehicle sales for 2018 were *over three times greater* than sales in 2015. *See* Julia Pyper, “US Electric Vehicle Sales Increased by

81% in 2018,” Greentech Media (Jan. 7, 2019), available at <https://www.greentechmedia.com/articles/read/us-electric-vehicle-sales-increase-by-81-in-2018#gs.M9kl11df>. Only by the contrivance of cutting off this data at the exact right moment could EPA arrive at the conclusion that lack of customer acceptance threatens realization of the 2022–2025 standards.

But even if one were to accept EPA’s cherry-picked facts, the conclusion EPA draws from those facts makes no sense. Even if it were true that electric vehicles sales had stalled, the purpose of the GHG standards is to *change* industry conduct so that consumers *can* and *are incentivized* to buy more efficient vehicles. Lyft and its drivers want the most fuel-efficient vehicles available, and Lyft has an independent interest in limiting carbon output in connection with its own commitment to carbon neutrality—and yet not all Lyft drivers have the most fuel-efficient vehicles. That is *because* those vehicles are not easily available and affordable, not because drivers do not want them. See Lyft Blog, “Making Cities More Livable with Electric Vehicles” (Feb. 6, 2019), available at <https://blog.lyft.com/posts/2019/2/6/making-cities-more-liveable-with-electric-vehicles> (relating that “over 80%” of Lyft’s

drivers reported favoring eco-friendly vehicle options). EPA ignores that the whole purpose of the standards is to make efficient vehicles *more commonplace* and *more affordable*. EPA's existing standards do so by setting ambitious but achievable goals over a time horizon that will drive investment by automakers. EPA now argues that it must reverse the very standards that will drive that change, on grounds that those not-yet-in force standards have not yet had their effect. That is irrational.

EPA also draws a head-scratching conclusion from the effect of the new standards on the availability of new and used vehicles. EPA worries that more stringent standards may force new car buyers into the used car market, reducing the rate at which efficient vehicles replace less efficient ones. *See Revised Determination* at 16083–84 (JA__). But even if that were to happen (and EPA offers virtually nothing to support its assertion), it ignores the positive effects of the standards on the used car market. Within only a year or two of implementation of the more stringent standards, increasingly efficient used vehicles will become available to purchasers. This is particularly important for Lyft drivers, who prefer to purchase late-model vehicles

but often want to avoid the expense of buying *new* vehicles. So even if there were a lag in fleet turnover, EPA entirely ignores the beneficial long-term effects of the standards on all parts of the market, including the used car market.

EPA's explanation crosses the line from pessimism to irrationality. The Technical Assessment Report made clear that technology *already exists* to meet the standards, even without the continued technological improvements that Lyft and others expect to see in the years to come. EPA agrees that its standards should drive markets toward greater efficiency, and claims only that it should find the right level of greenhouse gas standards to do that. So for the Administrator to rely primarily on the as-yet unmet goal of changed industry and consumer conduct to support weaker standards is entirely unreasoned. The Court should not endorse such a decision.

CONCLUSION

The Court should grant the petitions, and vacate EPA's determination that the 2022–2025 greenhouse gas standards are inappropriate.

Dated: February 14, 2019

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

Type-Volume Limitation:

Pursuant to Federal Rules of Appellate Procedure 29(a)(4)(G) and 32(a)(7)(B), I hereby certify that this brief contains 2,683 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

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February 14, 2019

/s/ Jared P. Marx

CERTIFICATE OF SERVICE

I certify that on February 14, 2019, the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

February 14, 2019

/s/ Jared P. Marx